

HOUSE BILL 3342  
By Armstrong

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 14, Part 1 and Title 47, Chapter 25, Part 11.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-14-152(a)(2), is amended by adding the language "and all rights protected by title 47, chapter 25, part 11" after the language "goods or services".

SECTION 2. Tennessee Code Annotated, Section 39-14-152(d)(2), is amended by deleting the period (.) at the end of the subdivision and substituting instead the following language:

, except with respect to violations involving distribution, selling, offering for sale, or possessing with the intent to sell, in which case all methods and manner of punishment in § 39-14-105 shall apply.

SECTION 3. Tennessee Code Annotated, Section 39-14-152(g), is amended by adding the language "title 47, chapter 25, part 11, or title 47, chapter 18, part 1" after the language "title 47, chapter 25, part 5".

SECTION 4. Tennessee Code Annotated, Section 47-25-1105(b), is amended by deleting the language "commits a Class C misdemeanor." and substituting instead the language "commits an offense which shall be punishable as theft pursuant to § 39-14-105, but in no event shall such offense be less than a Class E felony. In determining the value of property stolen for purposes of grading the punishment for theft, the retail value of the items or services offered by the person convicted under this section shall determine the value of the property stolen. Affidavits of the rights owner shall be admissible as evidence of the retail value."

SECTION 5. Tennessee Code Annotated, Section 47-25-1105(d), is amended by adding the language "including all instrumentalities used in connection with the unauthorized

use, and all cash in the immediate possession of the person violating this section” between the language “property” and “is”.

SECTION 6. Tennessee Code Annotated, Section 47-25-1106(a), is amended by adding the following language at the end of the subsection:

As part of such injunction, the court may authorize the confiscation of all unauthorized items and seize all instrumentalities used in connection with the violation of the individual’s rights and all cash in immediate possession of any person violating this section. For purposes of enforcing the injunction, the failure to immediately produce a license sufficient to satisfy the rights holder, or agent of the rights holder, shall be evidence of a violation of this section. All instrumentalities and cash seized pursuant to enforcing an injunction under this subsection shall be liquidated and used to satisfy statutory damages if damages are recovered by the rights holder.

SECTION 7. Tennessee Code Annotated, Section 47-25-1106, is amended by deleting subsection (d) and substituting instead the following:

(d) An individual is entitled to recover the following statutory damages in connection with the unauthorized use of the individual’s name, likeness, or photograph:

- (1) For 1-100 items or services, damages of five hundred dollars (\$500) per item or service shall be recoverable;
- (2) For 101-500 items or services, damages of seven hundred fifty dollars (\$750) per item or service shall be recoverable; and
- (3) For more than 500 items or services, damages of one thousand dollars (\$1,000) per item or service shall be recoverable.

In addition to the above damages, the aggrieved party may recover actual attorney’s fees.

SECTION 8. This act shall take effect July 1, 2004, the public welfare requiring it.